

**STATE OF CALIFORNIA**  
**DEPARTMENT OF FOOD AND AGRICULTURE**  
**MARKETING BRANCH**



**CALIFORNIA TREE FRUIT  
MARKETING PROGRAM**

Effective May 6, 2006

# CALIFORNIA TREE FRUIT MARKETING PROGRAM

## ARTICLE I DEFINITIONS

Section A. DEFINITION OF TERMS. As used in this program, the following terms shall have the following meanings:

1. “Act” means the California Marketing Act, being Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code as amended or as may be hereafter amended.
2. “Books and Record” means any books, records, accounts, contracts, documents, memoranda, papers, correspondence, or other written data reflecting operations under this Program.
3. “Box”, for the purposes of this marketing order, means a twenty-five (25) pound container used for marketing peaches and/or nectarines.
4. “Department” means the Department of Food and Agricultural of the State of California.
5. “California Tree Fruit Marketing Board”, “California Tree Fruit Board”, and “Board” are synonymous and mean the California Tree Fruit Marketing Board created pursuant to Article II of this Program.
6. “California Tree Fruit Marketing Program” or “Program” means, unless the context indicates otherwise, this marketing order, directly affecting producers of tree fruit, as defined herein, and which is issued by the Department pursuant to the provisions of the Act.
7. “Grower-Handler” means any producer who may also perform the function of a handler as herein defined.
8. “Handler” is synonymous with packer and/or marketer and means any person who handles tree fruit (except a common or contract carrier transporting fruit owned by another person).
9. “Inspection” means the thorough and systematic review of tree fruit lots by an authorized inspection agency or person to monitor and enforce compliance with the quality, designation of grade, or condition standards in effect at the time.
10. “Marketing Season”, “Fiscal Year”, and “Fiscal Period” are synonymous and mean the period beginning April 1 of any year and extending through March 31 of the following year.
11. “Person” means and individual, partnership, firm, corporation, association, affiliate, or other business unit.
12. “Producer” and “Grower” are synonymous and mean any person engaged within the State of California in the business of growing peaches and/or nectarines for the fresh market by producing them or causing them to be produced and who has a proprietary interest therein. A person who markets directly to consumers two hundred (200) pounds or less of peaches and/or nectarines per day shall not be deemed to be a producer. Officers of corporations actively engaged in growing peaches and/or nectarines are considered to be growers.

13. “Pure grower” means the grower is not an employee or officer of a packing business; or if he/she is an officer or employee of a packing business, that specific packing business packs 75% or more of its tree fruit from said grower. A pure producer is synonymous with pure grower.

14. “Random Verification Audit” means spot-checking to ensure compliance with the regulations established and/or authorized by the marketing order. The terms “random verification audit” and “inspection are not synonymous.

15. “Tree Fruit” for the purposes of this Program means peaches and nectarines, as defined below:

15a. “Peaches”, for the purposes of this Program means all peaches produced in California and marketed in fresh form. The definition includes all fruit resembling peaches or exhibiting peach characteristics produced by plants developed using one or more *Prunus* species, regardless of the process used for their development or of their classification (hybrid, variety, cultivar, etc). Said fruit are also subject to cultural practices common to peaches.

15b. “Nectarines” for the purposes of this Program means all nectarines produced in California and marketed in fresh form. The definition includes all fruit resembling nectarines or exhibiting nectarine characteristics produced by plants developed using one or more *Prunus* species, regardless of the process used for their development or of their classification (hybrid, variety, cultivar, etc). Said fruit are also subject to cultural practices common to nectarines.

## **ARTICLE II**

### **CALIFORNIA TREE FRUIT MARKETING BOARD**

#### **Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE.**

1. A board to be known as the California Tree Fruit Marketing Board is hereby established to assist the Department in the administration of this Program. The Board shall be composed of thirteen (13) producer members representing each commodity included in the definition of “tree fruit”. The initial Board will consist of twenty-six (26) members; of whom thirteen (13) shall be producers of peaches and thirteen (13) shall be producers of nectarines.

2. In addition to the producer members, upon recommendation of the Board, the Department may appoint one (1) member and one (1) alternate member to the Board to represent the general public. Such persons shall not be affiliated in any way with respect to the production or marketing of tree fruit. The public member and his/her alternate shall have all the rights and privileges, including voting, of any other member or alternate member of the Board.

3. There shall be an alternate member for each member of the Board. The alternate shall be selected in the same manner and for the same term as the member.

4. At its discretion, the Department will appoint producer members and alternate members from nominations received for that purpose.

5. The regular term of office of the members and alternate members of the Board, except the initial Board, shall be two (2) years, beginning with the effective date of this Program and continuing at the pleasure of the Department through March 31 of the applicable marketing season, or until their successors have been duly appointed and have qualified.

To provide for staggered terms of office for appointees to the initial Board, seven (7) peach and seven (7) nectarine members and their alternates shall serve a two (2) year term and six (6) peach and six (6) nectarine members and their alternates shall serve a one (1) year term.

6. No more than two (2) persons may represent a legal entity on the Board, provided each person is representing a different commodity. Each of these two individuals may be a member or an alternate.

7. No person, including those appointed to the initial Board, shall serve on the same position for more than 3 consecutive two-year terms. Notwithstanding these provisions, an appointment to fill less than a two-year term of office shall not be included in determining consecutive terms of office.

8. Producers on the Board shall be appointed by districts as herein described. In order to maintain equitable representation in accordance with the areas of production, district representation may be changed from time to time by recommendation of the Board and approval of the Department. Any such change of district representation shall be deemed a minor amendment to this Program.

Said districts and Board representation shall be as follows:

District No. 1 The "Northern California District" shall be represented by one (1) peach and one (1) nectarine member and one (1) peach and one (1) nectarine alternate and shall consist of the following counties: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Glenn, Butte, Sierra, Lake, Colusa, Nevada, Sonoma, Napa, Yolo, Marin, Contra Costa, Amador, Calaveras, Alpine, Tuolumne, Mono, Mariposa, San Francisco, Alameda, San Mateo, Santa Clara, Santa Cruz, Monterey, San Benito, Inyo, Yuba, Sutter, Placer, El Dorado, Sacramento, Solano, San Joaquin, Stanislaus, Merced and Madera. Either the member or the alternate for each commodity shall be a pure grower. If a pure grower declines the nomination, fails to qualify or is not available to serve, a grower-handler may fill the position.

District No. 2 The "Fresno District" shall be represented by six (6) peach and six (6) nectarine members, and six (6) peach and six (6) nectarine alternates, provided that three (3) peach and three (3) nectarine members and three (3) peach and three (3) alternates shall be pure growers. The Fresno District shall consist of the county of Fresno.

District No. 3 The "Tulare District" shall be represented by five (5) peach and five (5) nectarine members, and five (5) peach and five (5) nectarine alternates, provided that two (2) peach and two (2) nectarine members and two (2) peach and two (2) nectarine alternates shall be pure growers. The Tulare District shall consist of the counties of Tulare and Kings.

District No. 4 The "Kern District" shall be represented by one (1) peach and (1) nectarine member, and one (1) peach and one (1) nectarine alternate, provided that either the member or the alternate for each commodity shall be a pure grower. The Kern District shall consist of the counties of: Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego and Imperial.

#### Section B. NOMINATION AND APPOINTMENT OF THE MEMBERS AND ALTERNATES OF THE TREE FRUIT MARKETING BOARD.

1. Nominations of persons eligible to serve on the initial Tree Fruit Marketing Board shall be made and received at the public hearing held to consider the implementation of this Program.

2. The Department may appoint the initial members and their alternates from nominations received at such public hearing. Nominations shall include terms of office and shall be in accordance with the district representation and other applicable provisions as set forth in Section A of this Article.

3. On the years when terms of office are due to expire on a given district, the Department shall conduct or cause to be conducted either district nominations meetings or mail nominations based on Nomination and Preference Vote procedures recommended by the Board, and approved by the Department.

In making appointments of producer members and their respective alternates to the Board, the Department shall give due consideration to nominations received during the producer nomination process.

4. Each producer member and alternate of the Board shall be, during his/her term of office, a producer, or an authorized employee of a producer, in the district for which he/she is appointed.

#### Section C. FAILURE TO NOMINATE

In the event producer nominations are not made pursuant to Section B of this Article, the Department may appoint the members of the Board and their respective alternates, without regard to producer nominations, from persons who are qualified, as provided for in Section A of this Article.

#### Section D. ACCEPTANCE AND QUALIFICATION

Any person appointed by the Department as a member or an alternate member of the Board shall qualify by filing with the Board a written acceptance or such other documents as may be required by the Board and approved by the Department. Members and alternates shall maintain their eligibility throughout their terms.

#### Section E. ALTERNATE MEMBERS

An alternate member of the Board shall, in the absence of the member for whom he/she is an alternate, sit in the place and stead of such member at any meeting of the Board and shall have all the powers, duties, and privileges of the member while attending any such meeting. In the event of the death, removal, resignation, or disqualification of a member, his/her alternate shall act in his/her place and stead until a successor of such member is appointed and has qualified. An alternate may also serve in lieu of a member other than the one he/she is assigned to, if designated to do so by the Chair, in accordance with the provisions of Item 2 of Section G of this article.

#### Section F. VACANCIES

The Department may fill any vacancy occasioned by the death, removal, resignation, failure to qualify, or disqualification of any member or alternate member of the Board. In replacing a member or alternate member, the Department may take into consideration nominations made by the remaining members of the Board or eligible persons remaining from nominations received during the most recent nomination meetings or mail nominations; such nominees shall be appointed in accordance with the provisions of Sections A and B of this Article.

## Section G. MEETING PROCEDURES

1. The California Tree Fruit Marketing Board shall not perform any of its duties nor exercise any of the powers herein granted when more than six (6) vacancies (excluding the public member position) in its membership exist.

2. Eighteen (18) members of the Board, or their voting alternates, shall constitute a quorum. When both a member and his/her assigned alternate from a specific district are absent from a duly noticed and assembled Board meeting, is not present, the Board Chairman shall, with the concurrence of the majority of members present, designate any alternate member from that district, who is present at the meeting but whose assigned member is also present, to sit in place of the absent member for that meeting. If there are no other available alternates from that specific district, the Board Chairman shall, with the concurrence of the majority of members present, designate any available alternate member from any other district who is present at the meeting but whose assigned member is also present, to sit in place of the absent member for that meeting. However, an alternate may not serve in place of more than one absent member at a meeting. A procedure to prioritize the seating of alternate members shall be developed by the Board, and implemented upon approval by the Department.

3. Any action of the Board shall require the affirmative vote of a majority of the quorum present, but in any event shall not be less than twelve (12) voting members. Actions of the Board with respect to recommendations for regulations or expenses and assessments, pursuant to Article V, Section A and Section B, and Article IX, Section A, shall require at least eighteen (18) affirming votes

4. The Board may adopt, with the approval of the Department, such rules for the conduct of its meetings and functions hereunder as may be deemed desirable and necessary.

## Section H. OFFICERS, COMMITTEES AND SUBCOMMITTEES

1. On an annual basis the Board shall elect from among the board members a chairman and a vice chairman and up to 3 other Officers if deemed necessary.

2. The Board shall have an Executive Committee. Membership on the Executive Committee shall consist of the Board Officers and up to 3 other board members elected by the Board. Alternates are not eligible to serve on the Executive Committee.

3. In addition to having an Executive Committee, upon recommendation by the Board and with the approval of the Department, committees and subcommittees may be established as needed to assist the Board and the Department in performing the duties authorized pursuant to this Program.

4. The Board may develop and recommend to the Department for approval rules for the appointment of Board Officers and committee members that will help ensure equitable representation for each of the commodities affected by the Program.

## Section I. EXPENSES

The members of the Board, alternate members when acting as members or when requested by the Board, and committees or subcommittee members shall be reimbursed for necessary expenses incurred by them in the performance of their duties and in the exercise of their powers hereunder.

## Section J. DUTIES AND POWERS OF THE TREE FRUIT MARKETING BOARD

The Board shall have the following duties and powers, which may be exercised subject to the approval of the Department.

1. To administer all the provisions of this Program.
2. To recommend to the Department the establishment of rules and regulations authorized under and relating to this Program.
3. To receive and report to the Department complaints of violations of this Program.
4. To recommend to the Department any amendments to this Program.
5. To assist the Department in the assessment of members of the industry and in the collection of such assessments to cover expenses incurred by the Board and the Department in the administration of this Program.
6. To assist the Department in the collection of such necessary information and data as the Department or the Board may deem necessary to the proper administration of this Program and of the Act.
7. To keep minutes, books, and records which will clearly reflect all of its meetings, acts, and transactions to provide the Department with copies of the minutes duly certified by an authorized representative of the Board. Said minutes, books, and records shall be at all times subject to examination by the Department or its duly authorized representative.
8. To employ such personnel, as may be deemed necessary, and to determine the compensation, duties, and terms of employment of such personnel, subject to the approval of the Department.
9. To recommend to the Department retaining private counsel to represent the Program.
10. Follow Department procedures to secure authorization to receive, invest, borrow, pledge, or disburse funds pursuant to the provisions of Article 10 of the Act, part of which clearly authorizes the Board to establish and manage its own bank accounts outside of the State Treasury System.
11. Follow Department directives regarding compliance with all the applicable conflict of interest laws, other applicable laws, and State-mandated requirements.

## Section K. LIMITATION OF LIABILITY OF MEMBERS OF THE BOARD.

Board members and alternates, committee members duly appointed by the Department, and the employees of the Board shall not be held responsible individually in any way whatsoever to any producer, handler, grower-handler, or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board, alternate, committee member, or employee. The liability of the Board, its committees, or employees, shall be several and not joint, and no member or alternate member shall be liable for the default of any other member or alternate member. The Board shall provide Directors and Officers Insurance for all members and alternates of the Board.

## **ARTICLE III**

### **GENERAL RESEARCH**

#### **Section A. RESEARCH AND DEVELOPMENT AND SURVEY STUDIES.**

The California Tree Fruit Marketing Board is authorized, subject to the approval of the Department, to undertake or cause to be conducted, to administer, and to expend monies for research relating to the production and distribution of tree fruit. Such research activities may include, but shall not be limited to research, development and survey programs relating to acreage, varietal development, improvement, production, harvesting, handling, transportation from field to packing locations and from packing locations to market, and preparation for market of any or all varieties of tree fruit, as defined in this document. With the approval of the Department, the Board may expend money, enter into contracts with qualified research agencies, and do all things necessary and proper to conduct tree fruit research, development and survey programs, limited only by the provisions of Sections 58892 and 58892.1 of the Act.

#### **Section B. DISSEMINATION OF RESEARCH INFORMATION.**

The Marketing Board, with the approval of the Department, may release, distribute, and disseminate the results of research studies, and information obtained as a result of research.

## **ARTICLE IV**

### **ADVERTISING, SALES PROMOTION, AND MARKET DEVELOPMENT**

#### **Section A. ADVERTISING AND SALES PROMOTION.**

Subject to the approval of the Department, The California Tree Fruit Marketing Board is hereby authorized to:

1. Prepare plans, administer programs, and expend monies, for the purpose of:
  - a) promoting the sale of tree fruit to maintain existing markets, create new or larger domestic and export markets for tree fruit;
  - b) preventing, modifying or removing trade barriers which obstruct or may obstruct the free flow of tree fruit to any market;
  - c) educating growers, handlers, consumers, or other interested persons about the availability and location of supplies and demand for tree fruit, quality improvement methods, and the nutritional values of tree fruit.
2. Promotion plans and programs shall not make false or unwarranted claims on behalf of tree fruit, nor disparage the quality, value, sale or use of any other agricultural commodity.
3. Developing programs and activities that can be expanded upon and leveraged individually by private industry.
4. Enter into contracts with State, regional or national programs for the promotion of tree fruit and undertake any of the advertising and promotion activities authorized in the Act.
5. In addition to the foregoing and as part of its sales promotion and market development authorization, the Board may present facts to, and negotiate with, state, federal, or foreign governmental agencies on any of the matters authorized by Section 58604 and 58604.5 of the Act.
6. Plans and programs designed for domestic markets shall be directed toward promoting the sales of tree fruit without reference to a particular private brand name or trade name, except as authorized by the Act.



7. Plans and programs for international or foreign markets may include reference to private brands or trademarks, pursuant to the provisions of Section 58889.3 of the Act.

8. The Board may recommend and the Department may approve provisions for the establishment of regulations for, and rules for the permissive use of an official Board brand, trade name or label, or other designation of grade, quality or condition as provided for in the Act.

#### Section B. RESEARCH OF ECONOMIC AND MARKETING CONDITIONS

Whenever the Board deems it necessary, or at such times as the Department may require, the Board may investigate or cause to be investigated economic or marketing conditions affecting tree fruit. Such research investigation may include as many of the following facts as may be applicable:

1. Supply of tree fruit as to the quality, type, or form available or about to become available;
2. Present and prospective demand for the various qualities, types, and forms of tree fruit;
3. Other pertinent economic and marketing factors affecting the marketing of tree fruit.

Upon completion of any such research or investigation, the Board may prepare a report of its findings setting forth the research and may release or distribute such information or results.

### **ARTICLE V**

#### **GRADE, SIZE, QUALITY OR CONDITION SPECIFICATIONS AND UNIFORM GRADING AND INSPECTION**

##### Section A. DEFINITIONAL GRADE, SIZE, QUALITY OR CONDITION SPECIFICATIONS.

1. In carrying out the provisions of this Marketing Program and to facilitate the enforcement and administration thereof, the Board may recommend and the Department may approve the implementation of definitional grade, size, quality and condition specifications for tree fruit. Such specifications may include maturity, container descriptions, color, and other quality factors; however, they shall not be lower than any existing State or Federal regulations.

2. The implementation of definitional grade, size, quality or condition specifications shall not be interpreted to constitute minimum standards or result in the requirement to dispose of fruit. Additionally, unless recommended by the Board and approved by the Department, the establishment of definitional grading standards shall not result in mandatory inspections.

3. To assist in the development of appropriate recommendations and specifications, the Board may create and utilize a Tree Fruit Quality Committee and/or other committees or subcommittees as authorized herein.

4. In addition to any other definitional grade, size, quality specifications that may be recommended by the Board, there shall be:

- a. A maturity standard for tree fruit which shall be known as "mature" and will be the same definition as used in the US Grade Standards for the specific tree fruit commodities as defined in this program.
- b. A standard optional level known as "California Well-Matured®", defined as a distinctively more advanced in maturity than US #1 mature.
- c. A standard known as "US #1 mature" which will be the same as defined in the U.S. Standards for Grades of Peaches and/or Nectarines (7 CFR 51.1210 through 51.1223 and 51.3145 through 51.3160).

5. Any specific definitional grade, size, quality specifications for tree fruit included in this marketing order or recommended by the Board may be revised on an annual basis prior to April 1 of each marketing year. Any such revision shall be subject to the approval of the Department. Once implemented, grade, size, quality or condition specifications shall remain in effect for the entire marketing year for which they were approved, unless modified through seasonal regulations pursuant to the provisions of Article 19 of the Act.

#### Section B. INSPECTION AND CERTIFICATION.

1. Mandatory inspections shall not be required when the definitional grade, size, quality or condition specifications in effect do not include minimum standards. Such minimum standards may be used as a means to divert poor or unhealthy tree fruit from regular marketing channels, but may not be used as a form of supply control.

2. During any period or periods in which minimum standards are in effect, all tree fruit subject to the provisions of the Program shall be inspected and certified by an authorized inspection agency in accordance with rules and regulations as the Board may recommend and the Department may approve and issue.

3. If mandatory inspections are in effect undergoing a verification audit, as defined in this document, does not waive the need for an inspection. Undergoing an inspection does, however, exempt the handler from undergoing verification audits.

#### Section C. INSPECTION AGENCY

The Marketing Board is authorized to make suitable arrangements for inspection and certification by an established and experienced entity. The Board, with the approval of the Department, may employ its own inspectors.

#### Section D. COMPLIANCE.

1. The Board may arrange for the issuance of inspection certificates or other such evidence of compliance as the Board deems necessary and proper to ensure compliance with the minimum standards and any seasonal rules and regulations issued and made effective by the Department pursuant to the provisions of this Marketing Program.

2. The Board or its designee may waive the inspection requirements of this Article where it is determined that inspection is not available; provided, that all deliveries made under such waiver shall comply with all regulations in effect.

3. During any period in which minimum standards are in effect producers shall be authorized to sell or market only those tree fruit which comply with applicable regulations. No person shall market, handle, or transport any tree fruit in violation of any regulation made effective pursuant to this Marketing Program.

4. For the purposes of investigating possible violations of this portion of the Program the Department through its duly authorized representatives and agents, including Board personnel, shall have access to the records of producers, public and private property transportation agencies, and handlers of tree fruit and shall have at all times free and unimpeded access to all buildings, yards, warehouses, stores, and transportation facilities and other places in which tree fruit are kept, stored, handled or transported. All information obtained shall be confidential and shall not be disclosed except when required in a judicial proceeding,

5. Any person who violates the provisions of this Marketing Program or the orders of the Department issued pursuant hereto, or seasonal rules and regulations made effective hereunder, shall be subject to the penalties prescribed by the Act.

## ARTICLE VI

### UNFAIR TRADE PRACTICES: FALSE OR UNAUTHORIZED LABELING OF TREE FRUIT

#### Section A. UNFAIR TRADE PRACTICES AND THE PRACTICE OF FALSE LABELING OR UNAUTHORIZED LABELING OF TREE FRUIT

The Department finds that the practice of false labeling, ~~or~~ unauthorized labeling, **and inadequate labeling** of tree fruit for market are unfair trade practices and detrimental to the effectuation of the declared purposes of the Act. The provisions of this Program apply to all tree fruit subject to the provisions of this Marketing Order.

The following are hereby designated as unfair trade practices:

1. Inaccurately Labeling Tree Fruit. Labeling or causing the labeling of wholesale packages, consumer packages, or individual fruit in a manner that misrepresents the fruit's quality, size, ripeness, or other characteristic shall be an unfair trade practice.

2. Unauthorized use of the "CA Well Mat®" Label and/or other Registered Marks Owned or Controlled by the California Tree Fruit Marketing Program. Causing the unauthorized utilization or utilizing without authorization on wholesale packages, consumer packages, or individual fruit any mark owned or controlled by the California Tree Fruit Marketing Program without the explicit permission of the Program shall be an unfair trade practice.

3. Misuse of the "CA Well Mat®" Label and/or other Registered Marks Owned or Controlled by the California Tree Fruit Marketing Program. Causing the labeling or labeling wholesale packages, consumer packages, or individual fruit in a manner that does not meet the Program's requirements for the use of the Cal-Well Mature or any mark owned or controlled by the California Tree Fruit Marketing Program shall be an unfair trade practice.

4. Failure to apply traceback markings that may be required by the California Tree Fruit Marketing Program and to properly document their accuracy. Failing to apply traceback markings required by the California Tree Fruit Marketing Program and to properly document their accuracy shall be an unfair trade practice.

This designation of Unfair Trade Practices under this Program is not intended to limit the grower or handler's ability to develop and use its own labels, trademarks, or traceback markings.

#### Section B. RANDOM VERIFICATION AUDITS

All tree fruit subject to the provisions of this marketing order shall be subject to random verification audits by the California Tree Fruit Marketing Program or its agents to ensure compliance with the regulations established and/or authorized by the marketing order. The frequency and manner of these verification audits shall be recommended by the Board and approved by the Department.

The Advisory Board is authorized to recommend to the Department, for approval, suitable arrangements for the conducting of random verification audits on lots of tree fruit by an established and experienced agency, either governmental or private, or by Board employees.

#### Section C. COMPLIANCE

1. The Board may arrange for the issuance of verification audit certificates or other such evidence of compliance as the Board deems necessary and proper to ensure compliance with this Marketing Order and any regulations issued and made effective by the Department pursuant to this Marketing Order.

2. The Board may require handlers authorized to use a registered mark owned or controlled by the Program to register all brands under which inventory of affected tree fruit will be sold.

3. No grower or handler shall possess, store, market, handle or transport any tree fruit in violation of the Unfair Trade Practices provisions of this Marketing Order or regulations made effective pursuant to this Marketing Order. No grower or handler shall, directly or indirectly, do any act or cause others to do any act in violation of the foregoing unfair practices or the other terms of this Marketing Order.

4. The Department, through duly authorized representatives or agents shall have access, solely for the purposes of investigating possible violations of this Marketing Order, to the Books and Records of individuals and entities authorized to use the Cal-Well Mature registered mark or any other registered mark owned or controlled by the California Tree Fruit Marketing Program. Additionally, the Department shall have, at all times, free and unimpeded access to all buildings, yards, warehouses and transportation facilities and other places in which tree fruit is processed, stored, marketed, handled or transported. All information obtained shall be confidential and shall not be disclosed except when necessary in a judicial or administrative proceeding.

5. A grower or handler who violates the provisions of this Marketing Order, or orders or regulations issued pursuant hereto, shall be subject to the penalties prescribed in Article 21 of the Act.

## **ARTICLE VII**

### **UNFAIR TRADE PRACTICES EDUCATION**

The Board is authorized to implement an educational program which is designed to acquaint the industry with the unfair trade practices regulated by this Program, and the effect of the Marketing Order on these practices and the marketing of tree fruit.

## **ARTICLE VIII**

### **REGULATIONS**

#### **Section A. SEASONAL RULES AND REGULATIONS**

The Tree Fruit Marketing Board may, without prior notice or hearing, recommend, and the Department may adopt, such seasonal regulations as may be necessary to carry out the purposes and attain the objectives of this Marketing Order. Except for the 2006 marketing season, seasonal regulations must be established prior to each Marketing Season. Once implemented, they shall remain in effect during the entire season. Seasonal regulations may not be modified except in response to changing economic or marketing conditions as enumerated in Article 19 of the Act.

Unless otherwise decided by the Department, failure of the Board to make recommendations on or before the beginning of the marketing season will mean that such seasonal regulations in effect for the immediately preceding fiscal year will automatically apply during the new marketing season.

Notice of any such Seasonal Regulations, shall be given to all growers in the manner and within the time as specified in Article 19 of the Act.

## **ARTICLE IX**

### **BUDGETS AND RATES OF ASSESSMENT**

#### **Section A. RECOMMENDATIONS OF BUDGETS AND RATES OF ASSESSMENT BY THE BOARD**

1. At the beginning of each fiscal year and as may be necessary thereafter, the Board shall recommend to the Department a budget or budgets of estimated income, expenditures, and reserves for the administration and enforcement of this Program and the activities authorized hereunder. Said budget or budgets should be based on an estimate of the crop for the upcoming fiscal year. For each commodity the Board shall also recommend a preliminary maximum rate or rates of assessment to be levied upon producers of California tree fruit upon a uniform basis, sufficient to provide adequate funds to defray the proposed expenditures and reserves as set forth in said budget or budgets.

2. The preliminary assessment rate(s) shall remain in effect unless and until revised downward by recommendation of the Board with the approval of the Department. The preliminary rate(s) of assessment may not be revised upward. Assessments shall not become due and payable until the assessment rate or rates become final. Notwithstanding, the Board may accept voluntary advance payments from handlers. Said advance payments shall not bear interest. Prior to the Program's first marketing season procedures recommended by the Board and approved by the Department shall be implemented to credit growers and issue refunds, if applicable. Said procedures may be revised every year, prior to the beginning of a new marketing season.

3. Board recommendations for budgets and rates of assessment shall require at least eighteen (18) affirming votes.

4. The total rate of assessment which the Board may recommend per commodity shall not exceed twenty cents (\$.20) per twenty-five (25) pound box. The assessment rate per box shall be adjusted to be equivalent for boxes with other net weights.

#### **Section B. APPROVAL OF BUDGETS AND FIXING OF RATES OF ASSESSMENTS BY THE DEPARTMENT.**

If the Department finds that the recommended budgets and rates of assessment are proper and equitable and calculated to provide such funds as may be necessary to properly carry out the provisions of the Program, it may approve such budgets and rates. In no event shall said rates of assessment exceed the maximum authorized in this Program or the maximum permitted by the Act.

#### **Section C. PAYMENT AND COLLECTION OF ASSESSMENTS**

1. The obligation to pay assessments under this Program shall apply to producers on all tree fruit produced for market by said producers, delivered to handlers, prepared for market and marketed by said handlers. To facilitate collection, each handler of tree fruit shall pay the entire applicable assessment on all tree fruit received by him/her from a producer at the rates approved by the Department pursuant to the provisions of this Program. The handler shall, however, deduct any assessment paid for and on behalf of the producer from any money owed

by the handler to the producer. The Department shall verify that proper payment has been made by handlers for and on behalf of producers.

2. Any assessments levied hereunder shall constitute a personal debt of every person so assessed and shall be due and payable to the Department upon demand. In any event of failure of any person to pay any assessment payable hereunder, the Department may file a complaint against such person in a State court of competent jurisdiction for the collection thereof, pursuant to the provisions of Section 58929 of the Act.

3. The Department may add to any unpaid assessments interest, fees, and penalties pursuant to the provisions of the Act.

#### Section D. REFUNDS

Any monies collected as assessments during a marketing season and not expended in connection with the respective marketing operations may, at the discretion of the Department, be refunded at the close of any marketing season. The refund shall be made on a pro rata basis to all persons from whom assessments were collected. Alternatively, if the Department finds that the unexpended funds may be required to assist in defraying the cost of operating this marketing order in the succeeding marketing season, all or portions of such monies, as may be recommended by the Board and approved by the Department, may be carried over into the next succeeding marketing season.

Upon termination by the Department of this marketing order, any and all monies remaining and not required by the Department to defray the expenses of this marketing order shall be returned by the Department upon a pro rata basis to all persons from whom such funds were collected. If, however, the Department finds that the amounts so returnable are so small as to make impracticable the computation and remittance of refunds, the Department may use such funds to defray the expenses incurred by it in the formulation, issuance, administration or enforcement of any subsequent marketing order for tree fruit produced within the area. Any monies remaining thereafter shall be withdrawn with the approval of the Department from the approved depository and paid to the University of California at Davis for agricultural research purposes.

In the event that a participating commodity does not pass the continuation referendum, whenever practicable, the Board shall make a good faith effort to issue refunds to the growers of the commodity at matter using the process described above.

### **ARTICLE X GENERAL PROVISIONS**

#### Section A. PROHIBITION OF ACTIVITIES NOT AUTHORIZED UNDER THIS PROGRAM.

This Program does not authorize and expressly prohibits, as activities under this Program, any specific control or direct regulation of the volume and quantity of tree fruit which may be marketed during any marketing season.

#### Section B. ADMINISTRATIVE RULES AND REGULATIONS.

Upon the recommendation of the California Tree Fruit Marketing Board, the Department is authorized to issue and make effective such administrative rules and regulations and interpretations of terms as may be necessary to carry out the purposes and attain the objectives of this Program.

Section C. COORDINATION WITH OTHER STATE OR FEDERAL MARKETING ORDERS.

Insofar as may be practicable, the administration of this Program may be coordinated with any other marketing order or agreement or program that may be effective for tree fruit under either State or Federal statutes, or may be coordinated with State or Federal marketing orders or agreements or programs for any other commodity.

**ARTICLE XI**

**BOOKS, RECORDS AND REPORTS**

Section A. BOOKS AND RECORDS.

Any and all persons subject to the provisions of this Program shall maintain books and records reflecting their operations under this Program and shall furnish to the Department or its duly authorized or designated representatives such information as may be, from time to time, requested by it relating to their operations under this Program, and shall permit the inspection by said Department or its duly authorized or designated representatives of such portions of their books and records as relate to operations under this Program.

Section B. REPORTS TO THE MARKETING BOARD.

1. Upon request of the Marketing Board, made with the approval of the Department, each person shall furnish to the Board in such manner and at such times as the Board prescribes, and in addition to such other reports as are specifically provided for herein, such other information as will enable the Board to perform its duties and to exercise its powers in the proper administration and enforcement of this Program.

2. In years without mandatory inspections, the reports to be filed with the Board, other than total tree fruit volume produced or handled, shall be determined by the Board.

Section C. CONFIDENTIAL INFORMATION.

Any proprietary information obtained by the Program pursuant to the provisions of this Article shall be confidential and shall not be disclosed to any other person, save to a person with like right to obtain the same, or any attorney employed by the Department to give legal advice thereupon, or by court order. Proprietary information obtained in confidence shall be maintained in confidence.

Section D. IMMUNITY.

No person shall be excused from attending and testifying or from producing documentary evidence before the Department in obedience to the subpoena of the Department on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him tends to incriminate him or subjects him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he/she may be so required to testify or produce evidence, documentary or otherwise, before the Department in obedience to a subpoena issued by it.

**ARTICLE XII**

**APPEALS**

Section A. GRIEVANCE PROCEDURE.

The Board shall establish a grievance procedure in accordance with the policies and guidelines of the Department.

Section B. EFFECT OF FILING A GRIEVANCE.

The Department shall, if the facts stated show reasonable grounds, grant any such petition and may revise any order or decision upon which a grievance is filed.

**ARTICLE XIII**

**RELATION TO OTHER LEGISLATION**

Section A. ANTI-TRUST LAWS.

In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act (Sections 16700 et seq. of the Business and Professions Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Program in furtherance of the purposes and provisions of the Act shall be a complete defense to such action or proceeding.

**ARTICLE XIV**

**DURATION OF IMMUNITIES**

Section A. DURATION OF IMMUNITIES.

The benefits, privileges, and immunities conferred by virtue of the provisions hereof shall cease upon its termination except with respect to acts done under and during the time the provisions hereof are in force and delete effect.

**ARTICLE XV**

**AGENTS**

Section A. AGENTS OF THE DEPARTMENT.

The Department may designate and authorize any person or persons to act as its agent or agents with respect to any provision of this Marketing Order.

**ARTICLE XVI**

**DEROGATION**

Section A. DEROGATION.

Nothing contained herein is or shall be construed to be in derogation or in modification of the rights of the Department or of the State to exercise any powers granted by the Act or otherwise,



and in accordance with such powers to act in the premises whenever such action is deemed advisable.

## **ARTICLE XVII**

### **SEPARABILITY**

#### **Section A. SEPARABILITY.**

If any provision, authority, section, sentence clause, or part of the Marketing Program is, for any reason, held or declared to be invalid, or the applicability thereof to any person circumstance, or thing is held or declared to be invalid, such decision, declaration, or action shall not affect, the remaining portions of this marketing order or the applicability thereof to any other person, circumstance, or thing affected thereby.

## **ARTICLE XVIII**

### **EFFECTIVE TIME AND TERMINATION**

#### **Section A. INITIAL INDUSTRY REFERENDA**

The Program shall not go into effect without first being approved by producers in industry votes conducted by the Department, pursuant to the provisions of Section 58993(c). There shall be a separate referendum for the nectarine industry and a separate referendum for the peach industry. Depending upon the outcome of the separate referenda, the Program may go into effect for both industries, for the nectarine industry only, for the peach industry only, or not go into effect at all. In the event that only one of the industries approves of the Program, it is understood that several minor amendments may be needed in order to properly adapt the program to a single commodity format.

#### **Section B. EFFECTIVE TIME**

This program shall become effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department or by operation of law in accordance with the provisions of the Act.

#### **Section C. CONTINUATION REFERENDUM**

Beginning in the 2010-2011 fiscal year and every fifth fiscal year thereafter, the Department shall conduct industry votes consistent with the provisions of Section 58993(c) and Section A of this Article to determine whether and how the program should continue.

Depending upon the outcome of the separate referenda the Program may continue in effect for both industries, for the nectarine industry only, for the peach industry only, or not continue at all. In the event that only one of the industries approves the continuation of the Program, it is understood that several minor amendments may be needed in order to properly adapt the program to a single commodity format.

#### **Section D. TERMINATION**

Pursuant to the provisions of Section 59081 of the Food and Agricultural Code, the Department shall suspend or terminate this Program or any provision thereof whenever it finds, after a public hearing duly noticed and held in accordance with the provisions of Article 6, Chapter 1, Division 21 of said Food and Agricultural Code, that this Program or any provision thereof is contrary to

or does not tend to effectuate the declared purposes or provisions of the Act within the standards and subject to the limitations and restriction therein imposed; provided, that such suspension or termination shall not become effective until expiration of the then current marketing season. The Department may also suspend the provisions of or terminate this Program in accordance with the provisions of Section 59082, 59084, 59085 or 59087 of the Act.

#### Section E. EFFECT OF TERMINATION, SUSPENSION OR AMENDMENT

Unless otherwise expressly provided for in the notice of amendment, suspension or termination, no amendment, suspension, or termination of the Program issued by the Department shall either:

- (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provisions of said Program not so amended, suspended, or terminated;
- (b) release, condone, or dismiss any violation of said Program occurring prior to the effective time of such amendment, suspension, or termination;
- (c) affect or impair any rite or remedy of the Department or of any person with respect to such violation
- (d) affect any liabilities pursuant to the provisions of this Program.